



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
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December 7, 2023

CERTIFIED MAIL: 7014 2120 0001 8302 9736

City of Hood River Wastewater Treatment Plant
c/o Adam Schmid
818 Riverside Drive
Hood River, OR 97031

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-M-ER-2023-129

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of Hood River (the City) a civil penalty of \$21,980 for violations of the National Pollutant Discharge Elimination System (NPDES) permit issued to the City's wastewater treatment plant. Specifically, between October 2022–June 2023, the City exceeded the effluent limitations in the permit for BOD₅, TSS, pH, and *E. Coli* bacteria. Additionally, the City failed to collect all required monitoring data and failed to submit a complete discharge monitoring report on one occasion.

DEQ issued this penalty because compliance with the effluent limitations and monitoring requirements set forth in the City's NPDES permit is essential in protecting water quality and the City continues to have ongoing issues maintaining compliance with its permit. This is the seventh enforcement action the City has been the subject of in as many years. Prior cases include Case Nos. WQ/M-ER-2016-100, WQ/M-ER-2017-207, WQ/M-ER-2019-099, WQ/M-ER-2020-074, WQ/M-ER-2021-183, and WQ/M-ER-2022-114.

Included in Section IV of the enclosed Notice is a requirement to submit a proposed wastewater facilities plan to DEQ for review and approval within one year of this order becoming final by operation of law or on appeal. The plan must address the short and long-term improvements the City needs to implement to comply with permit requirements moving forward and a schedule for completing those improvements.

DEQ appreciates your efforts to ensure future *E. Coli* exceedances and missed UV monitoring events will not occur by replacing the UV system at the Facility. DEQ considered these efforts when determining the amount of the civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.oregon.gov

Via fax – 503-229-6762

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a portion of the penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Justin Sterger, DEQ Eastern Region
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:

CITY OF HOOD RIVER

Respondent.

NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER

CASE NO. WQ/M-ER-2023-0129

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

II. FINDINGS OF FACT

1. On October 28, 2020, the Department of Environmental Quality (DEQ) issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 101729 (the Permit) to the Respondent. The Permit authorizes the Respondent to operate the City of Hood River Wastewater Treatment Plant located at 818 Riverside Drive in Hood River, Oregon (the Facility) and to discharge treated wastewater into the Columbia River, a water of the state, in conformance with the requirements, limitations and conditions set forth in the Permit.

2. Pursuant to Condition 1 of Schedule A of the Permit, from May 1 through October 31 of each year, Respondent must meet the following waste discharge limitations for BOD₅ and TSS from Outfall 002:

<u>Parameter</u>	<u>AVERAGE EFFLUENT CONCENTRATIONS</u>		<u>EFFLUENT LOADINGS</u>		
	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly Average lbs/day</u>	<u>Weekly Average lbs/day</u>	<u>Daily Maximum Lbs</u>
BOD	20 mg/L	30 mg/L	330	500	660
TSS	20 mg/L	30 mg/L	330	500	660

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3. In June 2023, Respondent exceeded the BOD₅ limits in the Permit as follows:

June 24, 2023	The reported weekly BOD ₅ concentration of 39.5 mg/L exceeded the permit limit by 32%.	Class II violation
June 2023	The reported monthly average BOD ₅ concentration of 21.8 mg/L exceeded the permit limit by 9%.	Class III violation

4. In June 2023, Respondent exceeded the TSS limits in the Permit as follows:

June 2023	The reported monthly average TSS concentration of 35.5 mg/L exceeded the permit limit by 78%.	Class I violation
June 24, 2023	The reported weekly average maximum concentration of 81 mg/L exceeded the permit limit by 170%.	Class I violation
June 24, 2023	The reported weekly average maximum loading of 643.3 lb/day exceeded the permit limit by 29%.	Class II violation
June 20, 2023	The reported daily maximum loading of 803.4 lb/day exceeded the permit limit by 22%.	Class II violation

5. Pursuant to Condition 1 of Schedule A of the Permit, Respondent must meet an instantaneous pH limit between a daily minimum of 6.0 and a daily maximum of 8.5.

6. On June 25, 2023, Respondent reported a daily minimum pH result of 5.64.

7. Pursuant to Condition 1 of Schedule A of the Permit, no single *E. Coli* sample may exceed 406 organisms per 100mL.

8. Between October 2022 and June 2023, Respondent exceeded the *E. Coli* limit in the Permit as follows:

October 6, 2022	The reported daily result of 2,176 organisms/100mL was more than 5 times the Permit limit.	Class II violation
June 27, 2023	The reported daily result of 760 organisms/100mL was 1.9 times the Permit limit.	Class III violation
June 29, 2023	The reported daily result of 770.1 organisms/100mL was 1.9 times the Permit limit.	Class III violation

June 30, 2023	The reported daily result of 2,419.6 organisms/100mL was more than 5 times the Permit limit.	Class II violation
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9. Pursuant to Schedule B, Condition 3a. of the Permit, Respondent must monitor influent flow daily.

10. On August 2, 2022, Respondent failed to monitor influent flow.

11. Pursuant to Schedule B, Condition 3b. of the Permit, Respondent must monitor UV Intensity and UV Dose daily.

12. On January 2, 2023, Respondent failed to monitor for both UV Intensity and UV Dose. Respondent reported that the missed readings were due to a malfunction of the facility's UV system which has since been replaced.

13. Pursuant to Schedule B, Condition 2 of the Permit, Respondent must submit all monitoring results to DEQ electronically via DEQ's web-based Discharge Monitoring Report (DMR) forms. The DMR forms require weekly average BOD results to be reported as the maximum/highest weekly average for the month. In November 2022, Respondent reported weekly effluent BOD loading as the average of the weekly averages.

14. Pursuant to Schedule F, Condition A1 of the Permit, Respondent must comply with all conditions of the Permit. Failure to comply with any permit condition is a violation of ORS 468B.025.

15. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

III. CONCLUSIONS

1. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the Permit limits for BOD₅ on two occasions, as described in Section II, Paragraph 3 above. Pursuant to OAR 340-012-0145(4)(e), these are collectively treated as Class II violations. DEQ hereby assesses a \$2,600 civil penalty for these violations.

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2. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the Permit limits for TSS on four occasions, as described in Section II, Paragraph 4 above. Pursuant to OAR 340-012-0145(4)(e), these are collectively treated as Class I violations. DEQ hereby assesses a \$5,200 civil penalty for these violations.

3. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the pH limits set forth in the Permit, as described in Section II, Paragraphs 5–6 above. This is a Class III violation pursuant to OAR 340-012-0055(3)(b)(B). DEQ hereby assesses a \$1,680 civil penalty for this violation.

4. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the *E.Coli* limit set forth in the Permit, as described in Section II, Paragraphs 7–8 above. Pursuant to OAR 340-012-0145(4)(e), these are collectively treated as Class II violations. DEQ hereby assesses a \$2,500 civil penalty for these violations.

5. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to collect monitoring data, as described in Section II, Paragraphs 9–12 above. These are Class I violations pursuant to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$10,000 civil penalty for these violations.

6. Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to submit a complete discharge monitoring report, as described in Section II, Paragraph 13 above. This is a Class III violation pursuant to OAR 340-012-0055(3)(a). DEQ has chosen not to assess a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO:

1. Pay a total civil penalty of \$21,980. The determination of the civil penalty is attached as Exhibits 1–5 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**Department of Environmental Quality**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

1 2. Within one year of this order becoming final by operation of law or on appeal, submit to DEQ
2 for review and approval a proposed wastewater facilities plan that addresses short-term and long-term
3 improvements needed to ensure Respondent can comply with Permit requirements moving forward. The
4 plan must include a schedule by which Respondent will fully implement the plan.

5 3. Implement the wastewater facilities plan approved by DEQ pursuant to Section IV, Paragraph
6 2 above in accordance with the schedule set forth in the plan and approved by DEQ.

7 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

8 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
9 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
10 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
11 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
12 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
13 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
14 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
15 it to **503-229-6762** or email it to **DEQappeals@deg.oregon.gov**. An administrative law judge
16 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
17 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
18 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
19 you may represent yourself. If you are a corporation, partnership, limited liability company,
20 unincorporated association, trust or government body, you must be represented by an attorney or a duly
21 authorized representative, as set forth in OAR 137-003-0555.

22 Active duty Service members have a right to stay proceedings under the federal Service
23 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
24 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
25 Forces Legal Assistance Office through **<http://legalassistance.law.af.mil>**. The Oregon Military
26 Department does not have a toll free telephone number.

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1 If you fail to file a timely request for hearing, the Notice will become a final order by default
2 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
3 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
4 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
5 the relevant portions of its files, including information submitted by you, as the record for purposes of
6 proving a prima facie case.

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10 12/7/2023
11 Date



12 Kieran O'Donnell, Manager
13 Office of Compliance and Enforcement
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EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the BOD₅ limits set forth in Schedule A of the Permit on two occasions.
- CLASSIFICATION: Of the two violations, one was a Class II violation pursuant to OAR 340-012-0055(2)(a)(A); and one is a Class III violation pursuant to OAR 340-012-0055(3)(b)(A). Pursuant to OAR 340-012-0145(4)(e), the penalty is calculated as a Class II penalty.
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving stream.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's facility has a permitted flow of two million or more, but less than five million, gallons per day.
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case Nos. WQ/M-ER-2016-100, WQ/M-ER-2017-207, WQ/M-ER-2019-099, WQ/M-ER-2020-074, WQ/M-ER-2021-183, and WQ/M-ER-2022-114.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent violated the BOD₅ limits twice.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The BOD₅ limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the

limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,000 + $[(0.1 \times \$1,000) \times (10 + 0 + 2 + 4 + 0)] + \0
= \$1,000 + $[\$100 \times 16] + \0
= \$1,000 + \$1,600 + \$0
= \$2,600

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the TSS limits set forth in Schedule A of the Permit on four occasions.
- CLASSIFICATION: Of the four violations, two were Class I violations pursuant to OAR 340-012-0055(1)(k)(A); and two were Class II violations pursuant to OAR 340-012-0055(2)(a)(A). Pursuant to OAR 340-012-0145(4)(e), the penalty is calculated as a Class I penalty.
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving stream.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's facility has a permitted flow of two million or more, but less than five million, gallons per day.
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case Nos. WQ/M-ER-2016-100, WQ/M-ER-2017-207, WQ/M-ER-2019-099, WQ/M-ER-2020-074, WQ/M-ER-2021-183, and WQ/M-ER-2022-114.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent violated the TSS limits four times.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The BOD₅ limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the

limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$2,000 + [(0.1 x \$2,000) x (10 + 0 + 2 + 4 + 0)] + \$0
= \$2,000 + [\$200 x 16] + \$0
= \$2,000 + \$3,200 + \$0
= \$5,200

EXHIBIT 3

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the pH limits set forth in Schedule A of the Permit on one occasion.
- CLASSIFICATION: This is a Class III violation pursuant to OAR 340-012-0055(3)(b)(B).
- MAGNITUDE: Pursuant to OAR 340-012-0140(1), no magnitude determination is required for Class III violations.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$700 for a Class III violation in the matrix listed in OAR 340-012-0140(3)(b)(C) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's facility has a permitted flow of two million or more, but less than five million, gallons per day.
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case Nos. WQ/M-ER-2016-100, WQ/M-ER-2017-207, WQ/M-ER-2019-099, WQ/M-ER-2020-074, WQ/M-ER-2021-183, and WQ/M-ER-2022-114.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The pH limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.
- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$700 + [(0.1 x \$700) x (10 + 0 + 0 + 4 + 0)] + \$0
= \$700 + [\$70 x 14] + \$0
= \$700 + \$980 + \$0
= \$1,680

EXHIBIT 4

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATIONS: Respondent violated ORS 468B.025(2) by exceeding the *E. Coli* limits set forth in Schedule A of the Permit on four occasions.
- CLASSIFICATION: Of the four violations, two were Class II violations pursuant to OAR 340-012-0055(2)(a)(C); and two were Class III violations pursuant to OAR 340-012-0055(3)(b)(C). Pursuant to OAR 340-012-0145(4)(e), the penalty is calculated as a Class II penalty.
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving stream.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's facility has a permitted flow of two million or more, but less than five million, gallons per day.
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case Nos. WQ/M-ER-2016-100, WQ/M-ER-2017-207, WQ/M-ER-2019-099, WQ/M-ER-2020-074, WQ/M-ER-2021-183, and WQ/M-ER-2022-114.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent violated the *E. Coli* limits four times.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The *E. Coli* limits are express conditions of Respondent's permit. By failing to take necessary actions to comply with the

limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because the Respondent made reasonable efforts to ensure the violation would not be repeated by replacing the UV system.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,000 + [(0.1 x \$1,000) x (10 + 0 + 2 + 4 + -1)] + \$0
= \$1,000 + [\$100 x 15] + \$0
= \$1,000 + \$1,500 + \$0
= \$2,500

EXHIBIT 5

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATIONS: Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to collect monitoring data on three occasions.

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(o).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(i) because Respondent's facility has a permitted flow of two million or more, but less than five million, gallons per day.

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case Nos. WQ/M-ER-2016-100, WQ/M-ER-2017-207, WQ/M-ER-2019-099, WQ/M-ER-2020-074, WQ/M-ER-2021-183, and WQ/M-ER-2022-114.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent failed to collect monitoring data on three occasions.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The monitoring requirements are express conditions of Respondent's permit. By failing to comply with those requirements, Respondent failed to exercise reasonable care to avoid the foreseeable risk a permit violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because the Respondent made reasonable efforts to ensure future violations relating to UV monitoring will not be repeated by replacing the facility's UV system.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (10 + 0 + 2 + 4 + -1)] + \$0
= \$4,000 + [\$400 x 15] + \$0
= \$4,000 + \$6,000 + \$0
= \$10,000